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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,498	05/10/2001	Gary D. Jerdee	71163	7129

7590

04/07/2005

Mark L. Davis  
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EXAMINER

AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/852,498

Applicant(s)

JERDEE ET AL.

Examiner

Jeff H. Aftergut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smedberg (US 3,551,231) in view of Sands (US 3,390,035) and Andrusko (US 5,182,162) for the same reasons as presented in paragraph 2 of the Office action dated September 27, 2004.
3. Claims 10, 12-14, 16, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 2 further taken with Ballard for the same reasons as set forth above in paragraph 3 of the Office action dated September 27, 2004.
4. Claims 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 3 further taken with Kerr for the same reasons as expressed in paragraph 4 of the Office action dated September 27, 2004.
5. Claims 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 4 further taken with either one of PCT WO 98/38375 or PCT WO 98/38376 for the same reasons as expressed in paragraph 5 of the Office action dated September 27, 2004.

***Response to Arguments***

6. Applicant's arguments filed February 1, 2005 have been fully considered but they are not persuasive.

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The applicant argues the rejection presented above in paragraph 2 and the merits of the combination of the references to Smedberg (US 3,551,231), Sands (US 3,390,035) and Andrusko (US 5,182,162) and essentially has two arguments: (1) one skilled in the art would not employ the extrusion techniques of Sands in Smedberg as the substitution of the extruder for the roller coating in Smedberg as suggested by Sands would have destroyed the basic gist of the invention of Smedberg (and thus would have destroyed the same), and; (2) Andrusko is only concerned with the use of the extruded adhesive material (ethylene-methyl acrylate) for the formation of the primary backing and not for bonding the primary backing to the secondary backing. These arguments are respectfully traversed.

While Smedberg included the use of the roller coating as part of the disclosed invention therein, there is simply no reason to believe that the adhesive material wouldn't have alternatively been supplied in the bonding operation via an extruder. The applicant is advised that reference to Sands expressly stated that as an alternative to providing the adhesive with a roller which was partially submerged in a tank of the molten adhesive. Expressly, Sands stated:

"Any method known in the art of applying coatings of molten thermoplastic adhesive can be employed for applying the adhesive layer, for example, by extrusion, heated doctor blade, or by passing the bottom surface of the tufted material in contact with the top surface of a rotating roller partially submerged in a tank of molten adhesive. A doctor blade is commonly used to control the thickness of adhesive on the roller."(emphasis added)

where it can be seen that the use of an extruder or the use of a roller with a doctor blade as well as a tank into which the roller is submerged (which is the identical

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structure described by Smedberg) were art recognized alternatives. The applicant is advised that were, as here, two alternatives were known for their desired function, an express of the desirability of the substitution of one for the other is not needed to render such substitution obvious, see In re Fout, 213 USPQ 532, In re Siebentritt, 152 USPQ 618. clearly, the use of an extruder to provide the melted adhesive of Smedberg would have been obvious to one of ordinary skill in the art.

Regarding the second argument that the reference to Andrusko failed to teach extrusion of the material for joining a secondary backing to a primary backing and it would not have been obvious to utilize the ethylene-methyl acrylate as the molten adhesive for joining a secondary backing to the primary backing. This has not been found to be persuasive as the reference to Smedberg suggested that those skilled in the art would have employed an ethylene/acrylate or methacrylate copolymer as the adhesive for joining the primary backing to the secondary backing wherein the copolymer could make up the sole binder material used in the operation, see column 3, lines 27-30, column 3, lines 33-36. the reference to Smedberg therefore suggested that those skilled in the art would have incorporated an adhesive material which was a thermoplastic hot melt of the ethylene/acrylate or methacrylate type as the binder for a secondary backing to a primary backing in the manufacture of a tufted carpet. The reference to Andrusko suggested that a ethylene-methyl acrylate copolymer would have been a useful adhesive for joining two webs of material in the manufacture of a tufted carpet. There is no reason to believe that one skilled in the art would not have found the resin of Andrusko suitable for forming a tufted article and useful for joining a secondary

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backing to a primary backing in the manufacture of a carpet especially since the reference to Smedberg suggested such similar copolymers for the specified purpose. Applicant is advised that one need not show absolute certainty in making a prima facie case but rather only need have a reasonable expectation of success to suggest that the process as envisioned by the Office would operate in the manner suggested. Here, there is a reasonable expectation of success that the ethylene-methyl acrylate copolymer binder would have been useful for joining a secondary backing onto a primary backing in a tufted carpet assembly.

It should be noted with regard to the other references applied against the claims that the applicant failed to address any of these references. It is therefore believed that applicant agrees with the Office interpretation of these references.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

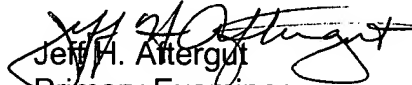
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:15-345 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 571-272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jeff H. Aftergut  
Primary Examiner  
Art Unit 1733

JHA  
April 5, 2005